JAN 4 - 2005

No. 03-1696

IN THE

Supreme Court of the United States

EXXONMOBIL CORPORATION, EXXON CHEMICAL ARABIA, INC. AND MOBIL YANBU PETROCHEMICAL COMPANY, INC.,

Petitioners,

v.

SAUDI BASIC INDUSTRIES CORPORATION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENT'S BRIEF

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QUESTION PRESENTED

Whether the court of appeals properly dismissed Petitioners' federal action pursuant to the *Rooker-Feldman* doctrine when: (i) the federal action presents claims identical tc ones already litigated to final judgment in the Delaware Superior Court; and (ii) Petitioners admit that the federal action is an "insurance policy" they will pursue only if they need to challenge a Delaware Supreme Court ruling reversing the Delaware Superior Court's final judgment for Petitioners.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Petitioner ExxonMobil Corporation has no parent corporations, and no publicly held corporation holds ten percent or more of its stock. Petitioner Exxon Chemical Arabia, Inc. is wholly owned by Exxon Overseas Corporation, which is wholly owned by ExxonMobil Corporation. Petitioner Mobil Yanbu Petrochemical Company, Inc. is wholly owned by Mobil Petroleum Company Inc., which is wholly owned by Mobil International Petrochemical Corporation, which is wholly owned by Mobil Corporation, which is wholly owned by ExxonMobil Corporation.

Respondent Saudi Basic Industries Corporation is a Saudi Arabian corporation that is owned seventy percent by the Saudi Arabian government and thirty percent by private investors. No publicly held corporation holds ten percent or more of its stock.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT ii

TABLE OF AUTHORITIES vi

BRIEF FOR RESPONDENT 1

OPINIONS BELOW 1

JURISDICTION 1

STATUTES INVOLVED 2

STATEMENT 2

A. Background 2

B. The "Identical" Delaware And Federal Court Proceedings 4

C. The Court Of Appeals' Proceedings And Disposition In This Action 6

SUMMARY OF ARGUMENT 8

ARGUMENT 10

I. THIS CASE IS NOW MOOT 10

II. IF THIS CASE IS NOT MOOT, THEN EXXONMOBIL'S SUIT IS NECESSARILY SEEKING TO REVIEW THE DELAWARE JUDGMENT AND IS BARRED BY *ROOKER-FELDMAN* 13

A. Federal District Courts Lack Jurisdiction Over Cases That Require "Review" Of A State-Court Judgment 13

TABLE OF CONTENTS
(Continued)

Page

1. The *Rooker-Feldman* Doctrine Is Compelled By The Statutes That Define The Limited Scope Of Federal Jurisdiction 14
2. This Court's Decisions Confirm That *Rooker-Feldman* Effectuates The Congressional Scheme Of Limited Federal-Court Jurisdiction 17
3. *Rooker-Feldman*'s Bar On "Identical" Claims Already Adjudicated Is Consistent With Judicial Federalism 24

B. An "Identical" Federal Suit On The "Identical" Claims Already Adjudicated In State Court Impermissibly Requires Federal Appellate Review Of The State-Court Judgment 28

C. ExxonMobil's "Identical" Federal Suit Here Is Barred Under *Rooker-Feldman* 31

D. ExxonMobil's Contrary Arguments Are Without Merit 33

1. Dual Sovereignty And Concurrent Jurisdiction Do Not Allow For Lower Federal-Court Review Of State-Court Decisions 33
2. *Rooker-Feldman* And Res Judicata Are Not "Co-Extensive" And Serve Different Purposes 35

TABLE OF CONTENTS
(Continued)

Page

3. The Application Of *Rooker-Feldman* Does Not Turn On Whether The Federal Plaintiff Is Seeking Relief From the State-Court Judgment 41
4. Discretionary Abstention Doctrines Cannot Serve As A Substitute For *Rooker-Feldman* 42
5. ExxonMobil Wrongly Advocates The Seventh And Ninth Circuits' Restrictive Approaches 44

CONCLUSION 48

TABLE OF AUTHORITIES

Page

Cases

ASARCO Inc. v. Kadish,
490 U.S. 605 (1989) 9, 17, 20, 21, 22, 29, 34
Aetna Life Ins. Co. v. Haworth,
300 U.S. 227 (1937) 11
Allen v. McCurry, 449 U.S. 90 (1980) 36, 39
Alton v. Alton, 347 U.S. 610 (1954) 11
Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs, 398 U.S. 281 (1970) 15, 24, 25-26
Bates v. Jones, 131 F.3d 843 (9th Cir. 1997) 38
Bosdorf v. Beach, 79 F. Supp. 2d 1337
(S.D. Fla. 1999) 30
Brown & Root, Inc. v. Breckenridge,
211 F.3d 194 (4th Cir. 2000) 31
Burton v. Wilmington Parking Auth.,
365 U.S. 715 (1961) 46
Centres, Inc. v. Town of Brookfield,
148 F.3d 699 (7th Cir. 1998) 47
Chick Kam Choo v. Exxon Corp.,
486 U.S. 140 (1988) 26
City of Chicago v. Int'l College of Surgeons,
522 U.S. 156 (1997) 16
Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976) 43
County of Allegheny v. Frank Mashuda Co.,
360 U.S. 185 (1959) 43
Crutchfield v. Countrywide Home Loans,
389 F.3d 1144 (10th Cir. 2004) 25
Cruz v. Melecio, 204 F.3d 14 (2000) 37
District of Columbia Court of Appeals v. Feldman,
460 U.S. 462 (1983) 9, 17, 19, 20, 22, 34, 36, 37, 42
Duckworth v. Egan, 492 U.S. 195 (1989) 27-28
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272 F.3d 841 (7th Cir. 2001) 46

TABLE OF AUTHORITIES
(Continued)

Page

England v. Louisiana Bd. of Med. Exam'rs,
375 U.S. 411 (1964) 23
Erie R.R. Co. v. Tompkins, 304 U.S. 64 (1938) 28-29
Fay v. Noia, 372 U.S. 391 (1963) 27
Felder v. Casey, 487 U.S. 131 (1988) 27
Finley v. United States, 490 U.S. 545 (1989) 14
Friedman's, Inc. v. Dunlap,
290 F.3d 191 (4th Cir. 2002) 12, 13, 30, 31
GASH Assocs. v. Village of Rosemont,
995 F.2d 726 (7th Cir. 1993) 44, 46, 47
Garry v. Geils, 82 F.3d 1362 (7th Cir. 1996) 38, 44
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Growe v. Emison, 507 U.S. 25 (1993) 33
In re Gruntz, 202 F.3d 1074 (9th Cir. 2000) 16, 30
Healy v. Ratta, 292 U.S. 263 (1934) 15
Heck v. Humphrey, 512 U.S. 477 (1994) 27
Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694 (1982) 39
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Johnson v. Fankell, 520 U.S. 911 (1997) 27
The Justices v. Murray,
76 U.S. (9 Wall.) 274 (1869) 17
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314 F.3d 468 (10th Cir. 2002) 39
Kokkonen v. Guardian Life Ins. Co.,
511 U.S. 375 (1994) 14
Kougasian v. TMSL, Inc.,
359 F.3d 1136 (9th Cir. 2004) 45
Kowalski v. Tesmer, 543 U.S. __,
2004 WL 2847751 (Dec. 13, 2004) 24
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222 F.3d 488 (8th Cir. 2000) 39

TABLE OF AUTHORITIES
(Continued)

Page

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Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367 (1996) 40
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Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1 (1983) 43
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N. Natural Gas Co. v. Grounds, 931 F.2d 678 (10th Cir. 1991) 12
Noel v. Hall, 341 F.3d 1148 (9th Cir. 2003) 44, 45
North Carolina v. Rice, 404 U.S. 244 (1971) 10-11
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Patterson v. Warner, 415 U.S. 303 (1974) 11
Pennzoil Co. v. Texaco Inc., 481 U.S. 1 (1987) 20, 22-23
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Ritter v. Ross, 992 F.2d 750 (7th Cir. 1993) 36
Rooker v. Fidelity Trust Co., 261 U.S. 114 (1923) 18, 47
Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 9, 16, 17, 18, 19, 22, 34, 47
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TABLE OF AUTHORITIES
(Continued)

Page

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In re Summers, 325 U.S. 561 (1945) 42
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Virginia v. Am. Booksellers Ass'n, 484 U.S. 383 (1988) 29
W. Group Nurseries, Inc. v. Ergas, 167 F.3d 1354 (11th Cir. 1999) 12
Washington Mkt. Co. v. District of Columbia, 137 U.S. 62 (1890) 11
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Berisha v. Hardy, 474 A.2d 90 (Vt. 1984) 37
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TABLE OF AUTHORITIES
(Continued)

Page

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Lexington Developers, Inc. v. O'Neal Constr. Co., 238 S.E.2d 770 (Ga. Ct. App. 1977) 37
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Tyson Foods, Inc. v. Aetos Corp., 818 A.2d 145 (Del. 2003) 39
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U.S. Constitution and Federal Statutes

U.S. Constitution, art. III 10
Act of March 3, 1863, ch. 81, 12 Stat. 755 16-17
Act of Sept. 6, 1916, ch. 448, § 2, 39 Stat. 726 ..... 17, 18
An Act To Establish the Judicial Courts of the United States, ch. 20, 1 Stat. 73 (1789) 16
Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1602 *et seq.* 4
28 U.S.C. § 158(a) 15
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28 U.S.C. § 1254(l) 1

TABLE OF AUTHORITIES
(Continued)

Page

28 U.S.C. § 1257 ..... 2, 8, 14, 15, 17, 19, 21, 22, 24, 28, 32, 47
28 U.S.C. § 1291 14
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28 U.S.C. § 1330 ..... 2, 4, 14, 15
28 U.S.C. § 1331 ..... 2, 14, 15
28 U.S.C. § 1332 ..... 2, 3, 14, 15
28 U.S.C. § 1605(a) 5
28 U.S.C. § 1738 ..... 2, 40
28 U.S.C. § 2106 45
28 U.S.C. § 2254 ..... 14, 16
28 U.S.C. § 2283 26
42 U.S.C. § 1983 27

State Constitutions and Statutes

Del. Const. art. iv, § 11 15

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TABLE OF AUTHORITIES
(Continued)

Page

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1 A.C. FREEMAN, A TREATISE OF THE LAW OF JUDGMENTS (1925) 33
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RESTATEMENT (SECOND) OF JUDGMENTS § 24 12
E.H. Schopler, Annotation, *Judgment as Res Judicata Pending Appeal or Motion for a New Trial, or During the Time Allowed Therefor*, 9 A.L.R.2d 984, 1950 WL 7140 (1950 & Supp. 1997) 37
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BRIEF FOR RESPONDENT

Respondent Saudi Basic Industries Corporation ("SABIC") agrees generally with the statement of the legal rule advocated by Petitioners (collectively, "ExxonMobil"). The *Rooker-Feldman* doctrine bars federal actions that are *de facto* appeals of state-court judgments. But ExxonMobil's application of that rule to this case is strained and divorced from the federal jurisdictional statutes that define the *Rooker-Feldman* doctrine.

ExxonMobil's federal "insurance policy" suit is an impermissible *de facto* appeal because it is admittedly identical in every way to the Delaware suit that ExxonMobil already litigated to a final judgment. Any federal-court jurisdiction at this point would necessarily involve federal "review" of the state-court ruling, but the only federal court empowered to "review" state-court rulings is this Court. The judgment of the Third Circuit should be affirmed.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit (Pet. App. 1a-8a) was issued on March 24, 2004 and is reported at 364 F.3d 102.

The interlocutory order of the United States District Court for the District of New Jersey (Pet. App. 11a-77a) was issued on April 3, 2002. The opinion is reported at 194 F. Supp. 2d 378.

JURISDICTION

The opinion of the United States Court of Appeals for the Third Circuit was issued on March 24, 2004 (Pet. App. 1a-8a). The petition for writ of certiorari was filed on June 22, 2004, and granted on October 12, 2004. This Court has jurisdiction under 28 U.S.C. § 1254(l).

STATUTES INVOLVED

The principal statutes at issue in this case, 28 U.S.C. §§ 1257, 1330, 1331, 1332, and 1738, are set forth in the Addendum to this Brief. (Add. 1a-2a.)

STATEMENT

This case centers on allegations that Respondent SABIC overcharged two SABIC-ExxonMobil joint ventures for certain technology used in the production of polyethylene. ExxonMobil's claims are all based on Saudi Arabian law, not federal law. ExxonMobil elected to go forward in a Delaware state-court action, rather than in this federal case, on the same claims against SABIC, and it won a $416.8 million final judgment against SABIC in the Delaware Superior Court. SABIC has appealed that judgment to the Delaware Supreme Court; briefing and oral argument are complete, and a decision is pending in that case.

The Third Circuit dismissed this federal action for lack of subject-matter jurisdiction pursuant to the *Rooker-Feldman* doctrine, because ExxonMobil admitted that its federal and Delaware suits raise "identical" claims, and that this federal suit is "an insurance policy" to be pursued only if the Delaware Supreme Court reverses the $416.8 million judgment. (Pet. App. 6a, 8a.) Indeed, ExxonMobil has said that, if SABIC is unsuccessful at obtaining a reversal in the Delaware state-court action, it will dismiss the federal suit. (Add. 3a-4a, 5a n.2.)

A. Background

In 1980, SABIC and two Delaware corporations – Mobil-Yanbu Corp. and Exxon Chemical Arabia, Inc. – formed two separate 50:50 joint ventures to produce polyethylene in Saudi Arabia. Both of those Delaware corporations are now wholly owned subsidiaries of ExxonMobil as a result of the

1999 merger between Exxon Corp. and Mobil Corp.[1] SABIC, which was then wholly owned, and is now 70% owned, by the Saudi Arabian government, entered into these joint ventures pursuant to a Saudi government mandate to attract capital investment and technological know-how from foreign corporations in the hope of better industrializing that nation.

The first of these two joint ventures – Yanpet – was formed on April 19, 1980 by a SABIC and Mobil-Yanbu joint-venture agreement. The other – Al-Jubail Petrochemical Co., known as Kemya – was formed on April 26, 1980 when SABIC and Exxon Chemical Arabia executed a nearly identical joint-venture agreement. Both Yanpet and Kemya are limited liability partnerships under Saudi Arabian law.

In 1998, SABIC brought unrelated claims of patent misappropriation against Exxon Corp. in federal district court in New Jersey. That complaint asserted direct claims by SABIC and derivative claims on behalf of Kemya, alleging that Exxon had breached a 1980 Service Agreement with Kemya by, in 1991, misappropriating technology belonging to the joint venture and using that technology to obtain two United States patents. SABIC invoked the district court's original jurisdiction under 28 U.S.C. § 1332 because the case involved non-federal claims against a diverse party. That case became known as "NJ-I."

In mid-2000, during discovery in the NJ-I case, ExxonMobil first alleged that SABIC had breached a provision of the joint-venture agreements. ExxonMobil

---

[1] On November 30, 1999, Exxon Corporation and Mobil Corporation merged to form ExxonMobil Corporation. Prior to that time, Exxon and Mobil were two entirely separate corporations, and SABIC's dealings with each company (and their respective subsidiaries) had been entirely separate.

claimed that, starting in 1980, SABIC provided certain technology for the production of polyethylene to the joint ventures and charged them a margin above SABIC's costs. ExxonMobil asserted that the joint-venture agreements required any technology provided by a partner to the joint ventures to be provided at cost.

B. The "Identical" Delaware And Federal Court Proceedings

On July 24, 2000, SABIC filed a declaratory-judgment action against the ExxonMobil subsidiaries in the Superior Court of New Castle County, Delaware. Because both ExxonMobil subsidiaries are Delaware corporations, Delaware was the only state where SABIC could ensure that it could obtain personal jurisdiction over both.

SABIC sought declarations that: (1) the relevant provisions of the joint-venture agreements do not apply to the polyethylene technology in question; (2) ExxonMobil's overcharge allegations are time-barred; and (3) SABIC had not overcharged the joint ventures. In early 2002, the ExxonMobil defendants asserted damage counterclaims for breach of contract and "usurpation" under Saudi Arabian law (called "*ghasb*") in the Delaware action.

On August 8, 2000, ExxonMobil and its two wholly owned subsidiaries filed this second case (called "NJ-II") in federal district court in New Jersey based upon the same dispute pending in Delaware. (Pet. 20; J.A. 3.) No federal law claims were asserted and jurisdiction was premised on 28 U.S.C. § 1330, which affords "original jurisdiction" in federal court for suits against foreign sovereigns and their commercial instrumentalities. ExxonMobil sought damages for SABIC's alleged breach of the joint-venture agreements.

SABIC immediately moved to dismiss ExxonMobil's federal suit based on, *inter alia*, SABIC's status as a foreign sovereign commercial instrumentality entitled to immunity under the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1602 *et seq.* ("FSIA"). (Pet. App. 45a-57a.) On

April 3, 2002, the district court, although recognizing that "it is undisputed that SABIC is a 'foreign state' as defined by the FSIA," held that SABIC's immunity had been abrogated based on the waiver exception, 28 U.S.C. § 1605(a)(1), and the commercial-activities exception, *id.* § 1605(a)(2), to immunity under the FSIA. (Pet. App. 45a-57a.) No litigation, including discovery, occurred in the NJ-II suit while the court's immunity decision was pending.

On April 22, 2002, SABIC filed an interlocutory appeal to the Third Circuit to challenge the district court's ruling denying SABIC immunity. (Pet. App. 4a.) The district court stayed proceedings pending resolution of that appeal.

Shortly before the New Jersey district court's ruling on the FSIA issue, ExxonMobil pushed to proceed to trial in the Delaware Superior Court. ExxonMobil's counsel urged:

> We are prepared to go forward. And, Your Honor, we're prepared to go forward quickly and have the case – if we're going to go and there's not going to be duplication, let's get the case moving and tried here in Delaware. And we have a schedule that we can propose today to get the case tried before the end of the year. It's our claim. It's our money. We'd like to go forward.

(Add. 8a.) The Delaware court agreed with ExxonMobil's election; the case proceeded rapidly through discovery; and a trial was held in March 2003.

ExxonMobil moved to be treated as the plaintiff in the Delaware action and thus to present its damage counterclaims first at trial. The Delaware court agreed, and after a two-week trial, a jury returned general verdicts on ExxonMobil's claims totaling $416.8 million. (Pet. App. 4a.) The Delaware Superior Court rejected SABIC's post-

trial motions, and the judgment became final in September 2003.[2]

On October 1, 2003, SABIC noticed its appeal to the Delaware Supreme Court. (Pet. App. 4a.) SABIC urged five primary arguments on appeal: (1) that ExxonMobil's claim was barred by limitations; (2) that ExxonMobil had released its claims against SABIC as part of a global release of claims its subsidiaries had against the joint ventures; (3) that Saudi contract law required judgment to be entered in SABIC's favor; (4) that Saudi law precluded ExxonMobil's "usurpation" tort claim; and (5) that the trial court had made critical evidentiary errors that compelled a new trial.

C. The Court Of Appeals' Proceedings And Disposition In This Action

On December 9, 2003, the Third Circuit heard argument in SABIC's interlocutory appeal.[3] Pursuant to the court's

[2] The Delaware Superior Court issued five separate orders with respect to SABIC's post-trial motions. *See SABIC v. Mobil Yanbu Petrochemical Co., Inc.*, No. 00C-07-161-JRJ, 2003 WL 22048238 (Del. Super. Sept. 2, 2003); *SABIC v. Mobil Yanbu Petrochemical Co., Inc.*, No. 00C-07-161-JRJ, 2003 WL 22048236 (Del. Super. Aug. 27, 2003); *SABIC v. Mobil Yanbu Petrochemical Co. Inc.*, No. Civ.A. 00C-07-161-JRJ, 2003 WL 22016813 (Del. Super. Aug. 26, 2003); *SABIC v. Mobil Yanbu Petrochemical Co. Inc.*, No. Civ.A. 00C-07-161-JRJ, 2003 WL 22016864 (Del. Super. Aug. 26, 2003); *SABIC v. Mobil Yanbu Petrochemical Co. Inc.*, No. Civ.A. 00C-07-161-JRJ, 2003 WL 22016843 (Del. Super. Aug. 26, 2003).

[3] Concurrently with the filing of its response brief at the court of appeals in July 2003, ExxonMobil moved for a stay of the appeal. In doing so, ExxonMobil argued that "if SABIC is unsuccessful on appeal in Delaware, the judgment in the Related Delaware Case – finding that SABIC overcharged the Joint Ventures – would be res judicata, rendering *moot* ExxonMobil's claims in NJ-II and, of course, SABIC's interlocutory appeal." (Add. 4a (emphasis added).) SABIC opposed the stay, but a two-judge panel initially granted it. The stay was subsequently lifted by the three-judge merits panel.

order, issued the day before argument (J.A. 17), the parties specifically addressed the question whether the Delaware final judgment stripped the federal court of jurisdiction under the *Rooker-Feldman* doctrine. During argument, the court expressly asked ExxonMobil's counsel, Mr. Quinn, to explain their continued pursuit of the federal action:

> THE COURT: But I guess you're not too unhappy so far in Delaware?
>
> MR. QUINN: So far so good. So far so good, but knock on wood, you never know, because anything could happen. We feel pretty good about it, but –
>
> THE COURT: So New Jersey is an insurance policy.
>
> MR. QUINN: In a way it is. . . .

(J.A. 35.)

ExxonMobil's counsel also admitted that, if SABIC loses the Delaware appeal, "there really would be nothing left to do except dismiss the New Jersey case" because ExxonMobil "can only collect the $417 million once." (J.A. 34-35.)

On March 24, 2004, after receiving supplemental briefing from both parties, the Third Circuit vacated the district court's decision and remanded the case "with instructions to dismiss th[e] action for lack of subject matter jurisdiction" pursuant to the *Rooker-Feldman* doctrine. (Pet. App. 8a.) The Third Circuit explained that "'a claim is barred by *Rooker-Feldman* under two circumstances: first, if the claim was 'actually litigated' in state court prior to filing of the federal action or, second, if the claim is 'inextricably intertwined with [the] state adjudication.'" (*Id.*, 5a (citations omitted).) The court held:

> Because ExxonMobil's federal claims were identical to the claims in which the Delaware Superior Court reached a final judgment, they are barred by the *Rooker-Feldman* doctrine. Even within our Court's narrow confines for *Rooker-Feldman*, this case is easily cabined. We cannot

> imagine a more classic invocation of the *Rooker-Feldman* jurisdictional bar than to preclude a party from maintaining a federal action as an "insurance policy" in case the state trial court decision in that party's favor is overturned by an appellate state court.

(Pet. App. 8a.)

ExxonMobil did not seek rehearing or rehearing en banc. Instead, ExxonMobil filed a petition for certiorari on June 22, 2004, which this Court granted on October 12, 2004.

SUMMARY OF ARGUMENT

I. This case should be dismissed as moot because ExxonMobil has already obtained complete relief on the "identical" claims in a judgment from the Delaware Superior Court, and because this federal action admittedly serves no purpose except as an "insurance policy" in the event that the Delaware Supreme Court reverses that judgment. A case is moot where, as here, full relief has been accorded by another court; even ExxonMobil admits that it "can only collect the $417 million once." A case is also moot where it does not present a live case or controversy; that is the circumstance here because the Delaware judgment fully extinguished ExxonMobil's claims.

II. If there remains anything for the federal court to do in this case, then it must be barred by the *Rooker-Feldman* doctrine, which recognizes that the only federal court that can "review" state-court judgments is this Court, 28 U.S.C. § 1257, and that any action that amounts to appellate "review" of a state-court judgment, in sum or in substance, is inconsistent with the strictly original jurisdiction bestowed on the federal district courts by Congress. The lower federal courts possess only the jurisdiction expressly granted by Congress, and Congress plainly denied the lower federal courts any manner of appellate authority over state-court judgments.

What has come to be called "the *Rooker-Feldman* doctrine" effectuates this congressional scheme by barring all lower federal-court "review" of state-court judgments. This Court's precedents make clear that federal suits challenging errors that occurred in the course of the state-court proceedings, as well as federal suits that seek to relitigate the "same claims" litigated in the state court, are barred. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989). The doctrine thus serves the important interests of comity and cooperation that underlie this statutory scheme by preventing the lower federal courts from "review[ing]" the work of the co-equal state courts, and by barring dissatisfied state-court litigants from jumping ship and relitigating their claims in federal court.

Whatever limits the doctrine may have, *Rooker-Feldman* unquestionably bars relitigation of "the very same" state-court claims in federal court – as ExxonMobil seeks here. *ASARCO*, 490 U.S. at 622. Such suits necessarily operate as *de facto* appeals, requiring the federal district court to reexamine – issue-by-issue – the same claims undergirding the state-court judgment. Such appellate review would thwart Congress's sound conclusion, and the lessons of history, that only this constitutionally mandated Court has the dignity and authority to make federal-court review of state-court decisions palatable.

By barring federal relitigation of "the very same" claims already adjudicated in a state court, the *Rooker-Feldman* doctrine uniquely fulfills a critical role in our system of judicial federalism. *First*, it complements our system of concurrent jurisdiction: Concurrent jurisdiction is designed to allow dual litigation of identical claims, but *not* beyond the point that the first court reaches a final judgment. *Second*, the doctrine forecloses federal relitigation where state-law preclusion principles would not, such as where a state appellate court vacates a final judgment and orders a

new trial; thus, the doctrine operates to prevent any federal-court interference in the state-court appellate process. *Third*, it protects the institutional relationship of the state and federal courts by ensuring that the federal court does not engage in any manner of "review," regardless of the particular relief the federal plaintiff seeks. *Finally*, unlike abstention and prudential dismissal doctrines, the *Rooker-Feldman* doctrine is properly not left to the "discretion" of the district courts, because it is premised on Congress's express limitations on federal jurisdiction.

By ExxonMobil's own admission, the only relief it could ever hope to achieve in federal court would be to trump the final outcome achieved by the Delaware state courts. There is no sound reason (and ExxonMobil offers none) why federal courts should provide such "insurance policies" for state-court plaintiffs worried that they may ultimately not prevail in the state-court judicial process that they themselves elected to pursue. Congress certainly did not give the lower federal courts that power.

ARGUMENT

This case is now moot because the claims on which this suit are based have been extinguished, and ExxonMobil has already admittedly received all the relief it can obtain. But even if there might be something left for a federal court to do in this case, this suit is jurisdictionally barred by the *Rooker-Feldman* doctrine because it is a *de facto* appeal that would require a federal district court to review the Delaware court's judgment on the "identical" claims.

I. THIS CASE IS NOW MOOT

No live case or controversy is currently before this Court because the Delaware Superior Court has adjudicated the precise claims at issue and granted ExxonMobil the complete relief it sought on those claims. Article III of the U.S. Constitution requires that, "[t]o be cognizable in a federal court, a suit '. . . must be a real and substantial controversy admitting of specific relief . . . .'" *North Carolina v. Rice*,

404 U.S. 244, 246 (1971) (quoting *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41 (1937)). It is hornbook law that federal courts may not exercise jurisdiction in cases where they can provide no remedy.[4]

Where "full relief is accorded by another tribunal," such as a state court, then "a proceeding seeking the same relief is moot." 13A CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3533.2, at 241 (2d ed. 1984). *See also Washington Mkt. Co. v. District of Columbia*, 137 U.S. 62, 63 (1890); *cf. Patterson v. Warner*, 415 U.S. 303 (1974) (remanding case to district court for a determination on mootness in light of intervening decision of Supreme Court of West Virginia). This is true even when the judgment is issued by a lower state court. *See Alton v. Alton*, 347 U.S. 610, 611 (1954) (dismissing federal action "upon the ground that the cause is moot" in light of intervening Connecticut superior court decree).

Here, ExxonMobil has already received complete relief. In the words of its lawyer, "we can only collect the $417 million once." (J.A. 34.) Indeed, ExxonMobil acknowledged that the Delaware state-court case would cause this federal action to become moot. In its Motion to Stay the Third Circuit appeal, ExxonMobil urged:

> if SABIC is unsuccessful on appeal in Delaware, the judgment in the Related Delaware Case – finding that SABIC overcharged the Joint Ventures – would be res judicata, rendering *moot* ExxonMobil's claims in NJ-II and, of course, SABIC's interlocutory appeal.

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[4] *See generally* ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 2.5, at 127 (3d ed. 1999) (case is moot if "a federal court decision is not likely to have any effect"); LINDA MULLENIX, MARTIN REDISH & GEORGENE VAIRO, UNDERSTANDING FEDERAL COURTS AND JURISDICTION § 2.08 (1998) ("When two proceedings are pending simultaneously and each involves the same issues and parties, then, a binding decision in one court will moot those issues in the second court.").

(Add. 4a) (emphasis added).) But Delaware Superior Court decisions, like the one here, are considered final judgments for purposes of preclusion. *Ezzes v. Ackerman*, 234 A.2d 444, 445 (Del. 1967). Indeed, it is well settled that "a valid and final judgment rendered in an action *extinguishes* the plaintiff's claim pursuant to the rules of merger." RESTATEMENT (SECOND) OF JUDGMENTS § 24 (emphasis added); *see also Hughes v. Trans World Airlines*, 336 A.2d 572, 574 (Del. 1975) (following the Restatement's rule of "bar," the corollary to "merger"); *Horsey v. Dozier*, No. 702 CIV. A. 1969, 1970 WL 115846, at *2 (Del. Super. Ct. Oct. 5, 1970) (quoting RESTATEMENT, *supra*, § 24). ExxonMobil's federal-court claims are already moot, then, notwithstanding the pending state appeal.[5]

Almost identical circumstances led to a mootness holding in *Friedman's, Inc. v. Dunlap*, 290 F.3d 191 (4th Cir. 2002). There, Friedman's obtained an order compelling arbitration from a lower state court in West Virginia, and subsequently sought the same relief in federal court. The court of appeals observed that appellant was "hedging its bets . . . want[ing] a federal order compelling arbitration at the ready in case the West Virginia Supreme Court of Appeals . . . reverses the decision of the lower state court." *Id.* at 195. In addition to finding the *Rooker-Feldman* bar applicable, the Fourth Circuit held that the case was moot because "when a state

[5] *See, e.g., N. Natural Gas Co. v. Grounds*, 931 F.2d 678, 684-85 (10th Cir. 1991) (holding that federal appeal was made "moot by operation of the doctrine of res judicata" because an intervening final state-court decision meant that the "controversy has already ended"); *W. Group Nurseries, Inc. v. Ergas*, 167 F.3d 1354, 1358 (11th Cir. 1999) (deciding whether appeal was rendered moot by the operation of res judicata); *see also Nesglo, Inc. v. Chase Manhattan Bank*, 562 F. Supp. 1029, 1046 (D.P.R. 1983) (analyzing whether a state-court judgment had preclusive effect on identical claims presented to the federal court, finding that it did, and subsequently holding that the case was moot because "collateral judicial proceedings have fully disposed of the live case").

court orders the same relief sought by the plaintiff in a parallel federal action, there is no longer a live controversy and the parallel federal claim is moot." *Id.* at 197.

In light of the complete damages award ExxonMobil received in Delaware state court on the identical claims, a federal judgment could accomplish nothing at this point. Accordingly, "[a]ny judgment of [this Court] . . . 'would be wholly ineffectual for want of a subject matter on which it could operate.'" *Local No. 8-6 Oil, Chem. & Atomic Workers Int'l Union v. Missouri*, 361 U.S. 363, 371 (1960) (citation omitted).

II. IF THIS CASE IS NOT MOOT, THEN EXXONMOBIL'S SUIT IS NECESSARILY SEEKING TO REVIEW THE DELAWARE JUDGMENT AND IS BARRED BY *ROOKER-FELDMAN*

The *Rooker-Feldman* doctrine bars federal suits that are expressly or functionally appeals of state-court judgments. ExxonMobil's federal suit, which raises the "identical" claims already litigated to judgment in Delaware state court, is therefore an impermissible *de facto* appeal. Notwithstanding ExxonMobil's desire to maintain this suit as an "insurance policy," the court of appeals correctly dismissed it under *Rooker-Feldman* for want of federal subject-matter jurisdiction.

A. Federal District Courts Lack Jurisdiction Over Cases That Require "Review" Of A State-Court Judgment

The jurisdictional statutes on which the *Rooker-Feldman* doctrine is built bar federal district courts from entertaining suits that raise claims or issues already adjudicated in a state-court proceeding. In this way, the doctrine carries out the explicit congressional design behind our dual court system: This Court is the only federal court that may review a state-court judgment, and the lower federal courts should not interfere with or impede the independent operation of state

trial and appellate courts by reviewing their judgments, in sum or in substance.

1. The *Rooker-Feldman* Doctrine Is Compelled By The Statutes That Define The Limited Scope Of Federal Jurisdiction

Under the federal jurisdictional system tailored by Congress, federal district courts are given "original jurisdiction" over certain matters, *see, e.g.*, 28 U.S.C. §§ 1330, 1331, 1332 *et seq.*; and the federal courts of appeals have jurisdiction to review certain decisions and judgments of federal district courts and federal agencies (but not state courts). *See, e.g.*, 28 U.S.C. §§ 1291, 1292 *et seq.* This Court is the *only* federal court with any jurisdiction to "review" a decision of any state court (with the exception of habeas corpus cases, *see* 28 U.S.C. § 2254). *See* 28 U.S.C. § 1257. This specifically described jurisdictional regime defines the scope and application of what has become known as the *Rooker-Feldman* doctrine. *Verizon Md. Inc. v. Pub. Serv. Comm'n*, 535 U.S. 635, 644 n.3 (2002) (noting that the doctrine "recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court, *see* [28 U.S.C.] § 1257(a)."). *See generally* LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 594 (3d ed. 2000).

Two fundamental interpretive principles inform the doctrine. One is the rule that federal courts can *only* exercise authority expressly granted them by Congress. *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994); *Finley v. United States*, 490 U.S. 545, 547-48 (1989) ("It remains rudimentary law" that in order for lower federal courts to exercise jurisdiction "[t]he Constitution must have given [it] . . . and an act of Congress must have supplied it. To the extent that such an action is not taken, the power lies dormant.") (internal quotation marks omitted).

The other is the rule that this Court "will not attribute to Congress an intent to intrude on state governmental functions," *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991). One of those core state functions is the orderly operation of a state judiciary, including the administration of state appellate courts to review the judgments of state trial courts. *See, e.g.*, Del. Const. art. iv, § 11; *see generally Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 285 (1970) (the federal Constitution "reserved" to the States the power to maintain "state judicial systems for the decision of legal controversies"); *Healy v. Ratta*, 292 U.S. 263, 270 (1934) ("Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their jurisdiction to the precise limits which the statute has defined.").

These statutes and principles define the *Rooker-Feldman* doctrine. Section 1257 grants this Court power to "review" "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had," and then only in limited circumstances where a federal issue is present. Congress's vesting of that appellate review power in this Court alone excludes the possibility that *any other* federal court can "review" judgments of state courts.

By contrast, Sections 1330, 1331, 1332 and the other related jurisdictional provisions grant the district courts only "original jurisdiction" over certain categories of civil actions.[6] Congress gave the federal district courts no "review" power over any state-court decisions; indeed, the very notion of "original jurisdiction" is antithetical to the

[6] Federal district courts do have narrow appellate jurisdiction over certain rulings of Article I judicial officers. They "have jurisdiction to hear appeals" from certain orders of bankruptcy courts, 28 U.S.C. § 158(a), and to "make a de novo determination" of the report and recommendations of a United States Magistrate Judge, *see* 28 U.S.C. § 636(b)(1).

power to engage in appellate "review."[7] *See Osborne v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 820 (1824) ("In those cases in which original jurisdiction is given . . . the judicial power of the United States cannot be exercised in its appellate form."). Thus, the only natural conclusion that can be drawn from this statutory scheme is that Congress by design denied the lower federal courts any manner of authority to review state-court judgments. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923) ("The jurisdiction possessed by the District Courts is strictly original.").

"[T]he closest we ha[ve] come to cross-system appellate review" lies in the federal habeas corpus statutes, but even there, "habeas corpus jurisdiction does not entail direct review of a state or local authority's decision." *City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 179 (1997) (Ginsburg, J., joined by Stevens, J., dissenting) (emphasis omitted). This sole and precisely limited statutory authority, 28 U.S.C. § 2254(a), confirms that Congress has, as a general matter, denied the federal district courts any "review" authority over state-court judgments. That Congress has not otherwise afforded district courts such authority makes plain that the district courts do not possess it.[8]

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[7] Federal bankruptcy courts do have limited original jurisdiction to "avoid state judgments, *see, e.g.*, 11 U.S.C. §§ 544, 547, 548, 549; to modify them, *see, e.g.*, 11 U.S.C. §§ 1129, 1325; and to discharge them, *see, e.g.*, 11 U.S.C. §§ 727, 1141, 1328." *In re Gruntz*, 202 F.3d 1074, 1079 (9th Cir. 2000) (*en banc*).

[8] This was not always the case. Although the Judiciary Act of 1789 first established the principle that federal trial courts should not review state-court decisions, *see, e.g.*, An Act To Establish the Judicial Courts of the United States, ch. 20, §§ 9, 11, 1 Stat. 73, 76-77, 78 (1789), Congress strayed from this course once, during the height of the Civil War. The Act of March 3, 1863, ch. 81, 12 Stat. 755-58, which was most notable for authorizing the President to "suspend the privilege of the writ of habeas corpus" "whenever, in his judgment, the public safety may require it" (*id.* § 1, 12 Stat. at 755), also allowed for removal of a limited category of state cases (involving actions against officers and others involving torts for arrests and imprisonment) *after judgment*, for a federal trial *de novo*, "as if the same [suit] had been there originally commenced, the judgment [of the state court] in such case notwithstanding." *Id.* § 5, 12 Stat. at 756-57. The Court struck down Section 5 on Seventh Amendment grounds, *see The Justices v. Murray*, 76 U.S. (9 Wall.) 274 (1869), consistent with its then-existing precedent that the Seventh Amendment prohibited reexamination of facts tried by a jury in state court, *id.* at 280-81 & n.9.

Thus, what has come to be known as the *Rooker-Feldman* doctrine is a statutory imperative: The lower federal courts are without any jurisdiction to "review" state-court judgments.

2. This Court's Decisions Confirm That *Rooker-Feldman* Effectuates The Congressional Scheme Of Limited Federal-Court Jurisdiction

This Court has applied these principles in three critical decisions: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983); and *ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989).

Rooker confirms what Section 1257 plainly says: Only this Court (and not the lower federal courts) may review state-court judgments, and even then only where (1) an issue is presented and actually litigated with respect to "the validity of a statute of [a] State . . . on the ground of its being repugnant to the Constitution," or (2) an issue is presented concerning a "right, privilege, or immunity . . . under the Constitution."[9] 28 U.S.C. § 1257.

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[9] *Rooker* addressed Section 237 of the Judicial Code, the predecessor to present Section 1257. Section 237 was identical to Section 1257, except that it provided for review "by writ of error" (rather than by writ of certiorari) where a state's highest court found (1) a treaty or statute of the United States *invalid*, or (2) a state statute *valid* under the Constitution or

The dispute in *Rooker* – which involved a suit filed by the Rookers alleging that the Fidelity Trust Company had breached a trust agreement – started in Indiana state court. After two trials and two rounds of appeals to the Indiana Supreme Court, the Rookers lost. They then raised two constitutional challenges in a petition for rehearing to the Indiana Supreme Court; they argued that an Indiana statute "relating to conclusions stated in pleadings and the mode of securing better statements" was unconstitutional, *Rooker v. Fidelity Trust Co.*, 261 U.S. 114, 116-17 (1923), and "that on the second appeal the [Indiana Supreme Court] took and applied a view of the trust agreement different from that taken and announced on the first appeal, and that this change in decision impaired the obligation of the agreement," and thus violated the Contract Clause. *Id.* at 117-18. The state supreme court denied the rehearing petition and the Rookers brought a writ of error before this Court, which this Court dismissed. *Id.* at 118.

The Rookers then filed suit in federal district court raising the two identical constitutional challenges that had already been raised to the Indiana Supreme Court and this Court, and seeking an order declaring the state judgment "null and void." *Rooker*, 263 U.S. at 414. The district court subsequently dismissed the suit for lack of jurisdiction and the Rookers appealed directly to this Court. *Id.* at 415. Finding that "the suit is so plainly not within the District Court's jurisdiction as defined by Congress," this Court affirmed the dismissal, stating:

> If the constitutional questions stated in the [district court action] actually arose in the [state case], it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of

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laws of the United States. Act of September 6, 1916, ch. 448, § 2, 39 Stat. 726, 726-27 (emphases added).

> jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. Under the legislation of Congress, no court of the United States other than this Court could entertain a proceeding to reverse or modify the judgment for errors of that character. To do so would be an exercise of appellate jurisdiction. The jurisdiction possessed by the District Courts is strictly original.

Id. at 415-16 (citations omitted).

In *District of Columbia Court of Appeals v. Feldman*, this Court elaborated on *Rooker* and held that constitutional or federal law claims involving the state-court proceedings may still be barred even if they were not specifically litigated in the state court. It is enough, the *Feldman* Court reasoned, that the federal claims are "inextricably intertwined" with the state court's judgment such that they would in essence require the federal court "to review the state-court decision." 460 U.S. at 483 n.16. Like the Rookers' second complaint, Feldman's district court complaint involved a claim challenging "the validity of a statute of [a] State . . . on the ground of its being repugnant to the Constitution," and (2) a claim concerning a "right, privilege, or immunity . . . under the Constitution." *See* 28 U.S.C. § 1257.

In *Feldman*, a D.C. bar applicant brought suit in federal district court after the District of Columbia Court of Appeals denied his petition for entrance to the bar. 460 U.S. at 468. The Court of Appeals subsequently refused to waive a bar admissions rule requiring applicants to have graduated from an accredited law school. *Id.* at 464-65. Feldman then brought suit in federal district court alleging two constitutional violations: that the District of Columbia Court of Appeals acted arbitrarily in violation of due process in refusing to waive the admission rule, and that the rule itself

was unconstitutional. *Id.* at 486. Unlike the situation in *Rooker*, neither of these claims was "actually litigated" in the D.C. court system on the applicant's petition for admission to the bar.

This Court held that Feldman's claim that the D.C. court acted arbitrarily in denying him a waiver was jurisdictionally barred. *Id.* at 482-83. Although that specific claim was not actually litigated in the D.C. court, this Court found that it was "inextricably intertwined" with the D.C. court's judgment denying bar admission,[10] and so the district court was "in essence being called upon to review the state-court decision." *Id.* at 483 n.16. The Court reasoned that the federal suit required "review" of the D.C. court's decision and, therefore, Feldman "should have sought review [of the judgment] . . . in this Court." *Feldman*, 460 U.S. at 482. However, the *Feldman* Court did allow the general constitutional challenge to the bar admission rule, which had not been presented to the D.C. Court of Appeals, because that claim was neither actually litigated as part of the dispute, nor was inextricably intertwined with the D.C. court's ruling. *Id.* at 487. Notably, this Court "expressly [did] not reach the question of whether the doctrine of *res judicata* forecloses" the federal district court from considering the general constitutional challenge. *Id.* at 487-88.

The third principal case addressing the scope of *Rooker-Feldman* is *ASARCO Inc. v. Kadish*, 490 U.S. 605 (1989). *ASARCO* demonstrates that readjudication of the "very same issues that were determined in the state-court proceedings" would be a violation of "*Rooker-Feldman*'s construction of 28 U.S.C. § 1257." *Id.* at 622-23. *ASARCO* concerned an

[10] *See also Pennzoil Co. v. Texaco Inc.*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring) ("the federal claim is inextricably intertwined with the state-court judgment" "[w]here federal relief can only be predicated upon a conviction that the state court was wrong").

appeal to this Court of a state judgment addressing "the validity of a statute of [Arizona]" that was "drawn in question on the ground of its being repugnant to the . . . laws of the United States." 28 U.S.C. § 1257.

In *ASARCO*, various individual taxpayers and the Arizona Education Association brought suit in Arizona state court against the Arizona Land Department and others. 490 U.S. at 610. The plaintiffs sought a declaration that a state statute governing mineral leases on state lands was void because it did not conform with the federal laws that originally granted those lands from the United States to Arizona. *Id.* The lessees of the disputed mineral rights were permitted to intervene as defendants. While the trial court upheld the state statute, the Arizona Supreme Court reversed, holding the statute "unconstitutional and invalid." *Id.* A number of the mineral lessees then filed a petition for certiorari, which this Court granted. *Id.*

The *ASARCO* Court first considered whether it possessed jurisdiction to review the state-court decision, "since neither respondent taxpayers nor respondent teachers association, who were the original plaintiffs, would have satisfied the requirements for bringing suit in federal court at the outset." *Id.* at 612. Although concluding that there was "no basis on which to find that respondents would satisfy the requirements for federal standing," *id.* at 616-17, this Court nonetheless held that "[t]he state proceedings ended in a declaratory judgment adverse to petitioners, an adjudication of legal rights which constitutes the kind of injury cognizable in this Court on review from the state courts." *Id.* at 618.

In reaching this conclusion, this Court expressly rejected the United States' argument "that the proper course for petitioners is to sue in federal trial court in order to readjudicate the very same issues that were determined in the state-court proceedings." *Id.* at 622. This Court reasoned that doing so "would come at the cost of much disrespect to state-court proceedings" because, "in essence, [it] would be

an attempt to obtain direct review of the Arizona Supreme Court's decision in the lower federal courts, and would represent a partial inroad on *Rooker-Feldman*'s construction of 28 U.S.C. § 1257." *Id.* at 622-23.

Critically, this Court recognized that, because the constitutionality of the Arizona statute had already been "actually litigated" and otherwise was a proper basis for appeal of a federal issue under Section 1257, it was outside the "original jurisdiction" afforded the federal district courts. *See id.* And this was recognized simply because the federal suit would have raised "these same claims" already adjudicated, *id.* at 620; the federal suit did not need to seek expressly to have the district court reverse the Arizona Supreme Court's decision, *see id.*

Taken together, *Rooker*, *Feldman*, and *ASARCO* demonstrate two fundamental aspects of the doctrine. *First*, it is a jurisdiction-allocating device ensuring that this Court's exclusive appellate authority under Section 1257 is not circumvented, directly or indirectly, by proceedings in the lower federal courts. If an issue or claim raised in a federal district court complaint is one that would in effect require review of a state-court judgment, then it is a prohibited *de facto* appeal and outside the original jurisdiction of the district courts.

Second, this Court's appellate authority generally involves one or both of two categories of issues arising from a state-court judgment: (i) grievances with or challenges to the state-court proceedings themselves that were either "actually litigated" or are "inextricably intertwined" with the judgment, and (ii) claims that were "actually litigated" involving the parties' underlying dispute.[11] *See also, e.g.*,

[11] *Amici Curiae* Defenders of Property Rights *et al.* "urge this Court to . . . construe the *Rooker-Feldman* doctrine so that it does not apply or does not divest federal courts of jurisdiction to hear takings claims ripened under the [*Williamson County Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172 (1985)] state court exhaustion requirement." (Amici Br. 12.) In *Williamson County*, this Court held that "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." 473 U.S. at 195.

Affirming the Third Circuit here will not bar takings claims under Section 1983 from federal court. So long as the federal plaintiff litigates only his *state-law claims* in state court, and not his Just Compensation claim, a federal action will not be barred by *Rooker-Feldman*, since the federal plaintiff will not be seeking to relitigate an identical claim. Critically, *Williamson* did not hold that a Just Compensation claim must first be litigated in state court, but only that the constitutional claim was not ripe until the state courts had finally denied "just compensation" under state law using adequate procedures. *Williamson*, 473 U.S. at 196-97. Moreover, the federal plaintiff may preserve his Just Compensation claim through an *England* reservation, *see England v. Louisiana Bd. of Med. Exam'rs*, 375 U.S. 411, 417 (1964). *See generally* J. David Breemer, *Overcoming* Williamson County*'s Troubling State Procedures Rule: How the* England *Reservation, Issue Preclusion Exceptions, and the Inadequacy Exception Open the Federal Courthouse Door to Ripe Takings Claims*, 18 J. LAND USE & ENVTL. L. 209, 244-51 (2003). The *England* reservation allows a federal plaintiff to preserve his right to litigate his Section 1983 claims in federal court *if* the plaintiff does not litigate his federal claims in state court *and* expressly reserves his right to litigate the Section 1983 claims in federal court. *See Ivy Club v. Edwards*, 943 F.2d 270, 280 (3d Cir. 1991).

Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 18 (1987) (Scalia, J., joined by O'Connor, J., concurring). Either of these sorts of challenges, in essence, requires "review" of the state-court judgment. *See* Section II(D)(5), *infra*. Whenever a party wishes to proceed in federal court with one of these two categories of issues, direct review by this Court under Section 1257 is the only recourse.

3. *Rooker-Feldman*'s Bar On "Identical" Claims Already Adjudicated Is Consistent With Judicial Federalism

This understanding of the doctrine carries out the congressionally limited jurisdiction of the federal courts and the concomitant reasons behind those statutes: to prevent needless friction between state and federal courts. *See Kowalski v. Tesmer*, 543 U.S. __, __, 2004 WL 2847751, at *5 (Dec. 13, 2004) ("[F]ederal and state courts are complementary systems for administering justice in our Nation. Cooperation and comity, not competition and conflict, are essential to the federal design." (quoting *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 586 (1999))). In this way, "the *Rooker-Feldman* doctrine is first and foremost an integral part of judicial federalism." Suzanna Sherry, *Judicial Federalism in the Trenches: The* Rooker-Feldman *Doctrine In Action*, 74 NOTRE DAME L. REV. 1085, 1101 (1999).

History confirms this understanding. While Congress could consitutionally allow lower federal courts to review state-court decisions, no Congress (save the unsuccessful 1863 attempt noted at n.8 above) has ever allowed the lower federal courts to serve "as appellate tribunals with jurisdiction to review state court decisions on federal questions." Preble Stolz, *Federal Review of State Court Decisions of Federal Questions: The Need for Additional Appellate Capacity*, 64 CAL. L. REV. 943, 946 (1976). *See also* THE FEDERALIST NO. 82 (A. Hamilton). As this Court has repeatedly emphasized, "from the beginning we have had in this country two essentially separate legal systems." *Atl. Coast Line R.R.*, 398 U.S. at 286 ("Each system proceeds independently of the other with ultimate review in this Court of the federal questions raised in either system.").

"The Supreme Court [alone] was chosen to review state court judgments because only it had sufficient dignity to make federal review of state courts reasonably palatable."

David P. Currie, *Res Judicata: The Neglected Defense*, 45 U. CHI. L. REV. 317, 323 (1978). In fact, our Nation's early history was rife with challenges by the states to having their courts' decisions reviewed even by *this* Court. *See, e.g., Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816) (rebuffing the Virginia Court of Appeals' attempt to remove its decisions from review by the U.S. Supreme Court). This kind of objection from state courts has been echoed in the modern era. *See, e.g., Pope v. Turner*, 517 P.2d 536, 537 (Utah 1973) (remarking, in a habeas corpus case, that "we are given the satisfaction of knowing that that which we do in this matter is of no consequence whatsoever and that the ruling of the Supreme Court of a sovereign state of the Union is subject to the whim of the inferior district courts in the Federal system"). In view of this historical context, it would be improper for *lower* federal courts, in any fashion other than by the clearest direction of Congress, to impede or otherwise reconsider final state-court decisions. *See generally* Williamson B.C. Chang, *Rediscovering the* Rooker *Doctrine: Section 1983, Res Judicata and the Federal Courts*, 31 HASTINGS L. J. 1337, 1345 (1980) (stating that it would be "patently unexplainable" to expand the lower federal courts' jurisdiction to allow for review of state-court judgments).

Furthermore, the doctrine also protects the state appellate processes. Under *Rooker-Feldman*, when a dispute has reached a final judgment in state court (whether favorable or unfavorable), then all subsequent litigation must be pursued through the state appellate system – not anew in federal district court. *See, e.g., Crutchfield v. Countrywide Home Loans*, 389 F.3d 1144, 1147 (10th Cir. 2004) (*Rooker-Feldman* "confin[es] state cases to state appellate systems" and, thus, "respects the values of federalism implicit in our parallel system of independent state and federal courts, with the United States Supreme Court at the apex of both"). *See generally Atl. Coast Line R.R.*, 398 U.S. at 287 ("Proceedings in state courts should normally be allowed to

continue unimpaired by intervention of the lower federal courts, with relief from error, if any, through the state appellate courts and ultimately this Court."); Sherry, *supra*, 74 NOTRE DAME L. REV. at 1100-01 (noting that "*Rooker-Feldman* is about courts," and that "allowing a civil litigant a second bite at the trial court apple is inconsistent with the statutory scheme that seems to contemplate the Supreme Court as the only federal court permitted to review state court civil decisions").

The doctrine serves the same interests in federalism and comity that underlie the "relitigation exception" to the Anti-Injunction Act, 28 U.S.C. § 2283. That provision governs the reverse situation as *Rooker-Feldman* – where a state court seeks to relitigate a federal case that has gone to judgment. The "relitigation exception" thus allows federal courts to enjoin state-court proceedings that seek to proceed with claims already adjudicated in federal court. *See Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 144 (1988). In enacting the "relitigation exception," Congress expressly recognized that our system of dual sovereignty could not function if co-equal courts were permitted to pass upon the identical claims already litigated in the other forum. *Atl. Coast Line R.R.*, 398 U.S. at 286 ("[T]his dual system could not function if state and federal courts were free to fight each other for control of a particular case."). The *Rooker-Feldman* doctrine is thus a direct congressional limitation on federal jurisdiction that serves the same interests in judicial federalism as the "relitigation exception" to the Anti-Injunction Act. *See* Sherry, *supra*, 74 NOTRE DAME L. REV. at 1105.[12]

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[12] Of course, Congress had to give the federal courts this limited injunctive power to accomplish this goal in the Anti-Injunction Act, because it does not possess the same constitutional authority to define state-court jurisdiction as it has to define that of the federal courts. At most, Congress might limit the state courts' authority to consider federal

So, too, this Court's habeas corpus decisions lend further support for the proposition that it is a *de facto* appeal for a federal court to engage in readjudication of issues "actually litigated" in state-court proceedings. To avoid the state-court exhaustion requirements of habeas corpus law, state prisoners often seek to frame challenges to their convictions and sentences as damages actions under 42 U.S.C. § 1983. This Court in *Heck v. Humphrey* adopted a broad functional standard to determine whether a Section 1983 proceeding is an impermissible *de facto* attempt to obtain federal review of a state conviction or sentence. 512 U.S. 477, 486-87 (1994). If a successful Section 1983 action would "necessarily demonstrate[]" the invalidity of a state-court judgment, it is a *de facto* challenge to the state-court conviction or sentence and thus can only be brought in habeas. *Id.* at 481-82.

In *Heck*, this Court itself recognized the close relationship between attempts to obtain collateral federal "review" of state criminal and civil judgments – indeed, it cited *Rooker* in support of the "strong judicial policy against the creation of two conflicting resolutions arising out of the same or identical transaction," and this Court's "long expressed . . . concern[] for finality and consistency" and resulting unwillingness "to expand opportunities for collateral attack." *Heck*, 512 U.S. at 484-85. *See also Duckworth v. Eagan*, 492 U.S. 195, 211 (1989) (O'Connor, J., joined by Scalia, J., concurring) (noting that habeas review by lower federal courts "has always been a flashpoint of tension in the delicate relationship of the federal and state courts and this exercise of federal power should not be undertaken lightly

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issues. *See Tarble's Case*, 80 U.S. 397, 407 (1871); *see also Johnson v. Fankell*, 520 U.S. 911, 922 n.13 (1997); *Felder v. Casey*, 487 U.S. 131, 138 (1988); *Fay v. Noia*, 372 U.S. 391, 466-67 (1963) (Harlan, J., dissenting); THE FEDERALIST NO. 82 (A. Hamilton) ("[T]he state courts will *retain* the jurisdiction they now have, unless it appears to be taken away in one of the enumerated modes.").

where no significant federal values are at stake"). These concerns apply with even greater force to federal-court reexamination of identical claims in the civil context, as there is no statutory authority for any sort of "civil habeas corpus" jurisdiction.

In short, the *Rooker-Feldman* doctrine prevents disappointed litigants from abandoning the state-court processes and pursuing the same claims in federal court if adverse circumstances develop in either the state trial or appellate courts. In this way, even critics of the doctrine recognize that it fulfills the "state interest in protecting the value of work done by its courts, as well as an interest in stopping parties from toying with state courts by filing suits and then dismissing them if things do not go as they wish." Barry Friedman & James E. Gaylord, Rooker-Feldman, *From the Ground Up*, 74 NOTRE DAME L. REV. 1129, 1155-56 (1999).

B. An "Identical" Federal Suit On The "Identical" Claims Already Adjudicated In State Court Impermissibly Requires Federal Appellate Review Of The State-Court Judgment

Whatever limits there are to the *Rooker-Feldman* doctrine, there is no doubt that a federal suit seeking to relitigate "the very same" claims for identical relief already embodied in a state-court judgment on the merits operates as an impermissible *de facto* appeal – particularly where, as here, the claims do not raise any federal questions.[13]

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[13] In cases where the rule of decision comes strictly from state law (or, as in the Delaware case, foreign law), *de facto* federal-court review of state-court judgments would perversely allow litigants to obtain federal review that even this Court could not provide under 28 U.S.C. § 1257. Moreover, such a regime could yield the bizarre result of allowing federal review of state-law determinations that this Court has long held that state courts are institutionally better equipped to answer. *See, e.g.*, *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938); *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383, 393-98 (1988).

This Court recognized this very principle in *ASARCO*, where it noted that federal court relitigation of the "same claims" raised in state court would require the "federal trial court . . . to readjudicate the very same issues that were determined in the state-court proceedings." 490 U.S. at 620, 622. Even though this "readjucat[ion of] the very same issues" would not have expressly taken the form of an appeal (in that the federal plaintiffs would not have been expressly noticing an "appeal" requesting review of the state-court judgment, or seeking a federal-court judgment "reversing" or "vacating" the state-court judgment), this Court still recognized that it would, "in essence," be a "review in the lower federal courts of a decision reached by the highest state court." *Id.* at 622.

Such full-scale "relitigation" in federal district court is even more offensive to federalism and comity than the situations presented in *Rooker* and *Feldman* themselves. Those cases involved attempts to relitigate discrete constitutional issues "actually litigated" in the state courts or "inextricably intertwined" with the state-court judgment. By contrast, a complete "do-over" in federal court of claims already decided in state court is tantamount to *de novo* review of every legal and factual conclusion reached by the state courts. *See* Susan Bandes, *The* Rooker-Feldman *Doctrine: Evaluating Its Jurisdictional Status*, 74 NOTRE DAME L. REV. 1175, 1179 (1999) (criticizing the doctrine but noting that it should apply where "litigants ask the federal courts to rehear issues identical to those on which they have already obtained state court decisions").

A federal court's issue-by-issue "relitigation" of the identical claims, in essence *de novo* appellate review, would result in a judgment carrying much the same force and effect

as an appellate decision reversing or affirming. Even putting aside the chaos and conflict that would result from a federal judgment at odds with the state-court judgment, the fact remains that mere "review" of the state judgment – regardless of whether the federal court agrees or disagrees with the state court – would be a profound insult to the state court's dignity, scarcely different than if the federal district court purported to issue an order "reversing" or "vacating" the state court's judgment. *See, e.g., In re Gruntz*, 202 F.3d 1074, 1078 n.2 (9th Cir. 2002) (*en banc*); Currie, *supra*, 45 U. CHI. L. REV. at 323.

Finally, from the perspective of the district court, the simple fact is that the court will still be called upon to address the identical issues – irrespective of whether the prevailing party in state court also brought the federal suit. *See, e.g., Friedman's, Inc.*, 290 F.3d at 197.[14] Although the federal plaintiff will be advancing the same arguments that the state court accepted, the defendant will necessarily challenge each of those arguments in the course of defending the federal action, just as it did in the state court. And as the federal court works through these interlocutory disputes and ultimately arrives at a final decision, the proceeding will take the shape of a *de facto* appeal because the district court will, in essence, be reviewing the work already done that led to the state court's judgment.

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[14] *See also Bosdorf v. Beach*, 79 F. Supp. 2d 1337, 1341 (S.D. Fla. 1999) (dismissing federal suit even though plaintiffs "have not directly challenged the state court's ruling or asked this court to direct the state court to do something . . . [because] the principles behind *Rooker-Feldman* prevent the Court from hearing [plaintiffs'] claims"; reasoning that "the spirit of the doctrine is to prevent federal courts from interfering with state court rulings," and the doctrine itself "reflects the important respect and understanding that goes to the very heart of federalism – the dual dignity of state and federal courts").

C. ExxonMobil's "Identical" Federal Suit Here Is Barred Under *Rooker-Feldman*

ExxonMobil's suit here is identical, and admittedly so, to the Delaware state action in which the state trial court rendered a substantial money judgment in favor of ExxonMobil. Because the identical claims raised in this suit have been "actually litigated" in the state court, the Third Circuit properly concluded that this suit presents a "classic invocation of the *Rooker-Feldman* jurisdictional bar." (Pet. App. 8a.)

ExxonMobil concedes that the claims in this suit are identical to those already litigated to judgment in Delaware. In its petition for certiorari, ExxonMobil admitted that there has already been a "prior adjudication of identical claims in the Delaware trial court" (Pet. 20), that "ExxonMobil's claims based on SABIC's overcharging of the joint ventures are identical in the federal and Delaware actions" (*id.*, 18), and that the claims here are "identical to claims in an action pending on appeal in the Delaware Supreme Court" (*id.*, 2). *See, e.g., Friedman's, Inc.*, 290 F.3d at 196 ("[T]he fact that the decision of a state court is winding its way through the state appellate system does not subject it to federal review in the meantime."); *Brown & Root, Inc. v. Breckenridge*, 211 F.3d 194, 199 (4th Cir. 2000) (same). Moreover, there is no question that ExxonMobil received full relief on its claims, having recovered every cent of the $416.8 million it sought. As ExxonMobil acknowledged in oral argument before the Third Circuit, ExxonMobil is simply litigating this suit as an "insurance policy" in the event that things go south for it in the Delaware Supreme Court. (J.A. 35.)

Because ExxonMobil admits that it has "actually litigated" the identical claims to final judgment in Delaware state court, any and all further litigation about those claims is about "review" of state-court rulings, which is the province of the Delaware Supreme Court and, eventually, this Court (assuming the existence of a constitutional or federal issue) –

but not a federal district court. Relitigation of these "identical" claims in federal district court would impermissibly require the district court to pass upon – "review," in the words of Section 1257 – the Delaware courts' work in this extraordinary case. And paradoxically, that federal-court review would likely be more potent than the review available from this Court under Section 1257, for ExxonMobil's complaints asserted no federal claims.

In this case, once the Delaware trial court had reached a judgment for ExxonMobil, relitigation in federal court was prohibited. This is so regardless of any possible future outcome in the Delaware Supreme Court, because when that court rules, its ruling will itself be embodied in a second state-court judgment, this time an appellate judgment. If that court affirms, defense against any relitigation of these claims would require a challenge to the Delaware Supreme Court's judgment. If that court reverses on the merits, ExxonMobil's prosecution of the identical claims in federal court would challenge the Delaware Supreme Court's judgment. And, even if the Delaware Supreme Court were to remand the claims for a new trial, or to reverse on a procedural ground, relitigation of those claims in federal court would still require federal "review" of the numerous legal and factual determinations by the Delaware Superior Court and Supreme Court underlying those courts' judgments.

Simply put, once the Delaware trial court entered final judgment on these "identical" claims, the Delaware courts became the only avenue for continued litigation, short of Supreme Court review under Section 1257 (in the event a constitutional or federal law issue exists). Accordingly, the court of appeals correctly recognized that the federal suit is now outside the original jurisdiction of the district court, and it correctly dismissed this suit without prejudice.

D. ExxonMobil's Contrary Arguments Are Without Merit

ExxonMobil characterizes *Rooker-Feldman* as a "jurisdictional principle that the subject matter jurisdiction bestowed by Congress on the lower federal courts does not include jurisdiction to review state-court decisions." (Pet. Br. 8.) SABIC has no problem with that articulation of the rule, as far as it goes. But it does not go far at all: ExxonMobil offers numerous arguments regarding the *application* of this rule that are inconsistent with its own articulation of the rule, ignore the text of the relevant jurisdictional statutes, misconstrue other doctrines related to federal jurisdiction, and rely upon inapposite policy contentions.

1. Dual Sovereignty And Concurrent Jurisdiction Do Not Allow For Lower Federal-Court Review Of State-Court Decisions

ExxonMobil contends that if *Rooker-Feldman* barred federal suits seeking to relitigate "identical" claims from a state court proceeding, then this "would eviscerate concurrent jurisdiction." (Pet. Br. 10; *see also id.*, 28.) This erroneous assertion rests on two critical misunderstandings.

First, ExxonMobil incorrectly asserts that concurrent state and federal jurisdiction over identical claims extends past the entry of a final judgment by one of the competing fora. (*See* Pet. Br. 29-30.) State and federal courts may simultaneously have original jurisdiction over identical claims. *Growe v. Emison*, 507 U.S. 25, 32 (1993); *see also McClellan v. Carland*, 217 U.S. 268, 282 (1910). This, of course, makes perfect sense, because otherwise a party unhappy with the federal forum could file a defensive action in state court and thereby deprive the federal court of jurisdiction; since the state and federal trial courts are co-equal, neither would be required to defer to the on-going work of the other. *See* CHEMERINSKY, *supra*, § 14.2; 1 A.C. FREEMAN, A TREATISE OF THE LAW OF JUDGMENTS § 335, at 672 (1925).

Where one forum arrives at a final judgment, however, the other relinquishes original jurisdiction over the "identical" claims, because whatever follows – in whatever court – is "review" of that final judgment. Indeed, this Court has never held that a federal district court can continue to exercise concurrent jurisdiction over claims "actually litigated" to a judgment in state court. Continued litigation of the identical claims would put the court that is still proceeding in the position of effectively reviewing the earlier court's judgment. *Martin v. Wilks*, 490 U.S. 755, 784 n.21 (1989) (Stevens, J., dissenting) ("permitting collateral attacks also leads to the anomaly that courts will, on occasion, be required to sit in review of judgments entered by other courts of equal – or even greater – authority") (citing *Rooker*, *Feldman*, and *ASARCO*).

But under ExxonMobil's application of the doctrine, concurrent jurisdiction would have allowed the state and federal suits to proceed virtually simultaneously, reach *opposite* judgments, and then continue up their respective state and federal appellate chains. This, in turn, would yield the unseemly (to say the least) possibility that the Delaware Supreme Court and the Third Circuit would continue in a race to appellate judgment, in the desire to be the first court to pronounce on ExxonMobil's right to recovery under the Saudi Arabian legal principles at issue. While preclusion doctrines *might* avoid this result, there are too many vagaries to those doctrines to *ensure* against this. *See* Section II(D)(2), below. The proper application of the jurisdictional *Rooker-Feldman* doctrine, however, draws a hard line that avoids this cross-system tension, and ensures that the Delaware courts, with which ExxonMobil chose to cast its lot, are allowed to complete their work free of federal second-guessing. *See, e.g.*, Friedman & Gaylord, *supra*, 74 NOTRE DAME L. REV. at 1174 ("Federal courts ought to be reluctant to provide a forum for ship-jumping by state plaintiffs; state law may not accommodate this interest

because it results from the interjurisdictional problem arising from the existence of federal courts.").

Second, ExxonMobil argues that concurrent jurisdiction would be eliminated if a federal district court could not relitigate claims "actually litigated," because, in their estimation, this "version of *Rooker-Feldman* compels dismissal of a federal plaintiff's claims whenever identical claims are also pending in state court." (Pet. Br. 10; *see also* Pet. Br. 29.) But *Rooker-Feldman* does not compel dismissal of federal claims identical to those merely "pending" in state court; only when the identical claims are actually litigated to judgment is the suit exclusively committed to the state judicial system.

ExxonMobil's reliance on the notion of concurrent federal-state jurisdiction as a reason to rule in its favor would, as the Third Circuit recognized, only promote circumvention of the state-court appellate processes and improperly place federal courts in the statutorily forbidden role of reviewing state-court judgments. (Pet. App. 7a.) Moreover, it would encourage forum-shopping, forum-jumping, and never-ending litigation. Those results are neither desirable nor allowed by statute.

2. *Rooker-Feldman* And Res Judicata Are Not "Co-Extensive" And Serve Different Purposes

ExxonMobil erroneously argues that *Rooker-Feldman*'s bar on identical claims that have been actually litigated in state court "conflate[s] *Rooker-Feldman* with res judicata" (Pet. Br. 10), and thereby makes the doctrine "redundant with preclusion." (Pet. Br. 18.) This assertion is both incorrect and irrelevant.

First, barring federal-court relitigation of the identical claims in ExxonMobil's federal suit would not "conflate" *Rooker-Feldman* and res judicata. *Parkview Assocs. P'ship v. City of Lebanon*, 225 F.3d 321, 329 (3d Cir. 2000) ("'Equating the *Rooker-Feldman* doctrine with preclusion is natural; both sets of principles define the respect one court

owes to an earlier judgment. But the two are not coextensive.'"). "Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were *or could have been raised in that action.*" *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (emphasis added); *Div. of Child Support Enforcement ex rel. Blake v. Myrks*, 606 A.2d 748, 750 (Del. 1992) ("[T]he procedural 'bar of *res judicata* extends to all issues which might have been raised and decided in the first suit as well as to all issues that actually were decided.'"). *Rooker-Feldman*, in contrast, only bars federal suits that seek, in sum or substance, appellate review of claims actually litigated to judgment in the state-court system, and challenges to the judicial proceedings themselves.[15] *Rooker-Feldman*, unlike res judicata, does not bar claims that merely "could have been raised" but were not.

Feldman itself makes this clear. This Court found that the challenge to the District of Columbia Court of Appeals' decision should have been raised as a direct appeal to the Supreme Court. 460 U.S. at 486. However, the general challenge to the underlying bar admission rule, which had not been raised before the D.C. court, was not jurisdictionally barred, although this Court remanded the issue to the district court to determine if it was precluded by res judicata. *Id.* at 487-88. *See also Parkview Assocs. P'ship*, 225 F.3d at 327; *Ritter v. Ross*, 992 F.2d 750, 754 (7th Cir. 1993).

Second, *Rooker-Feldman* has applications in situations where res judicata would not apply. For example, a

[15] To the extent that there is an overlap between *Rooker-Feldman* and res judicata, "overlap" is not in and of itself impermissible. Even ExxonMobil concedes this. (Pet. Br. 18 ("There is, in fact, almost certainly overlap – that is, some actions that are jurisdictionally barred by *Rooker-Feldman* would also be barred by preclusion doctrine, if jurisdiction existed in the federal court to apply preclusion.").)

substantial minority of states (including California) do not apply res judicata until the states' highest court has rendered a final decision (where an appeal is taken).[16] In such instances, *Rooker-Feldman* would properly bar federal-court relitigation of the identical issues even before the state's highest court had ruled. This is particularly important because, in addition to preventing the federal district court from considering a *de facto* appeal of the state-court judgment, *Rooker-Feldman*'s bar simultaneously prevents the dissatisfied state-court litigant from seeking to relitigate the claims in federal court in the hopes of achieving a preclusive favorable judgment before the state appellate process is exhausted. This is exactly why, "once the federal

[16] Some of the states that do not attach preclusive effect to a judgment until the highest state court has rendered a final decision (or the time to take an appeal to the highest court has expired), include California (*Sandoval v. Superior Ct. of Kings County*, 190 Cal. Rptr. 29, 32 (Ct. App. 1983)); Georgia (*Lexington Developers, Inc. v. O'Neal Constr. Co.*, 238 S.E.2d 770, 771 (Ga. Ct. App. 1977)); Hawaii (*Flores v. Barretto*, 54 P.3d 441, 450 (Haw. 2002) (Moon, C.J., dissenting)); Idaho (*Rincover v. State*, 917 P.2d 1293, 1298 (Idaho 1996)); Kansas (*Grimmett v. S & W Auto Sales*, 988 P.2d 755, 757 (Kan. Ct. App. 1999)); Louisiana (*Dupre v. Floyd*, 825 So.2d 1238, 1240 (La. Ct. App. 2002)); Nevada (*Sherman v. Dilley*, 3 Nev. 21, 1867 WL 2012, at *4 (1867)); New Hampshire (*In re Donovan*, 623 A.2d 1322, 1324 (N.H. 1993)); Oklahoma (*Grider v. USX Corp.*, 847 P.2d 779, 784 n.1 (Okla. 1993)); South Dakota (*Poindexter v. Hand County Bd. of Equalization*, 565 N.W.2d 86, 90 (S.D. 1997)); Tennessee (*McBurney v. Aldrich*, 816 S.W.2d 30, 34 (Tenn. Ct. App. 1991)); Utah (*Young v. Hansen*, 218 P.2d 674, 675 (Utah 1950)); Vermont (*Berisha v. Hardy*, 474 A.2d 90, 91 (Vt. 1984)); Virginia (*Faison v. Hudson*, 417 S.E.2d 302, 305 (Va. 1992)); and West Virginia (*Jordache Enter., Inc. v. Nat'l Union Fire Ins. Co.*, 513 S.E.2d 692, 703 (W. Va. 1998)). *See generally* E.H. Schopler, Annotation, *Judgment as Res Judicata Pending Appeal or Motion for a New Trial, or During the Time Allowed Therefor*, 9 A.L.R.2d 984, 1950 WL 7140 (1950 & Supp. 1997). Similarly, the Commonwealth of Puerto Rico does not attach a preclusive effect until the Island's highest court has ruled. *See, e.g., Cruz v. Melecio*, 204 F.3d 14, 20-21 (1st Cir. 2000).

plaintiff opts voluntarily to submit all claims to the state courts, that ought to bar a subsequent federal suit on *Rooker-Feldman* grounds even if preclusion does not apply." Friedman & Gaylord, *supra*, 74 NOTRE DAME L. REV. at 1161.

Third, *Rooker-Feldman* properly bars *federal-court* relitigation of claims where exceptions exist in state preclusion law that allow for *state-court* relitigation. For example, California recognizes an exception to res judicata for matters of significant public interest (such as election-related disputes). *See Bates v. Jones*, 131 F.3d 843, 845 (9th Cir. 1997) (*en banc*). Relitigation in the federal courts, however, represents a direct affront to the judicial federalism embodied in the federal jurisdictional statutes: While state-court relitigation will, in the end, produce but one final binding state-court decision, relitigation in federal court produces competing decisions between the state and federal courts. As Judge Rymer (joined by Judge O'Scannlain) has put it, in such instances "*Rooker-Feldman* instructs that a federal district court lacks jurisdiction to start down this path." *Id.* at 856 (Rymer, J., concurring); *see also id.* ("[T]o re-review the constitutionality of Proposition 140 put the district court on a collision course with the California Supreme Court. . . . Appellate authority would be turned upside down if the federal district court were able effectively to 'overrule' the California Supreme Court.").

Fourth, *Rooker-Feldman* is not subject to waiver for failure to timely raise the bar, as res judicata may be. As a principle of federal subject-matter jurisdiction, *Rooker-Feldman* may – indeed, must – be considered by the Court *sua sponte*, but res judicata is an affirmative defense under most states' laws and, therefore, may be subject to waiver if not timely raised. *See, e.g., Garry v. Geils*, 82 F.3d 1362, 1367 n.8 (7th Cir. 1996). But the federalism and forum-allocation interests behind the jurisdictional statutes would not be furthered by making their application dependent on

the parties' litigation choices. *See* Currie, *supra*, 45 U. CHI. L. REV. at 324-25.

Res judicata is a doctrine focused primarily on the parties and on finality. It "precludes the parties or their privies from relitigating issues," and is designed to "relieve parties of the cost and vexation of multiple lawsuits" that might produce "inconsistent decisions." *Allen v. McCurry*, 449 U.S. at 94. By contrast, *Rooker-Feldman*, as a jurisdictional principle, is court- and federalism-focused, playing the critical institutional role of preventing needless friction within our system of judicial federalism.[17] *See generally Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) ("no action of the parties can confer subject-matter jurisdiction upon a federal court"; thus, "the consent of the parties is irrelevant," "principles of estoppel do not apply," "and a party does not waive the requirement by failing to challenge jurisdiction early in the proceedings").

Fifth, res judicata only applies so long as a final judgment is in effect, *see Tyson Foods, Inc. v. Aetos Corp.*, 818 A.2d 145, 147-48 (Del. 2003) (discussing the general rule that vacatur may be necessary to prevent a judgment from obtaining precedential or preclusive res judicata effect), while *Rooker-Feldman* continues to apply from the time the state trial-court proceedings are first completed and the state appellate process becomes available – even if a state appellate court, as part of its own judgment, alters the trial court's ruling or orders a new trial.

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[17] *See, e.g., Lemonds v. St. Louis County*, 222 F.3d 488, 495 (8th Cir. 2000) ("[W]hereas res judicata is largely a matter of common law and involves the impropriety of permitting parties to have 'two bites at the apple,' *Rooker-Feldman* is based squarely on federal law and is concerned with federalism . . . ."); *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 479 (10th Cir. 2002) (same).

This is demonstrated by considering the differing application of the two doctrines where a state-court final judgment, after winding its way through the state's appellate process, is vacated and a new trial is ordered. In such an instance, there would be no res judicata bar to an identical federal suit and so the non-prevailing state party would, in the absence of *Rooker-Feldman*, be free to pursue federal litigation in order to escape the state appellate court's conclusions (which would obviously be the law of the case on retrial in the state trial court). Yet the federal court would still be asked to "review" state-court rulings – both the appellate court's judgment and the trial court's prior judgment. That is perhaps even more of an affront to the dignity of the state courts, and to the "[c]ooperation and comity" expected of the respective state and federal court systems, than federal-court review of a state trial-court judgment. *Ruhrgas AG*, 526 U.S. at 586.

Sixth and finally, *Rooker-Feldman* as properly understood does not conflict with 28 U.S.C. § 1738, the Full Faith and Credit Act (*see* Pet. Br. 21), nor does it "circumvent[] consideration of state preclusion law, in contravention of [the] congressional mandate" under Section 1738, as ExxonMobil claims. (Pet. Br. 10.) ExxonMobil has the inquiry backwards – application of Section 1738, which is a merits inquiry, *see, e.g., United States ex rel. Laird v. Lockheed Martin Eng'g & Science Servs. Co.*, 336 F.3d 346, 350 (5th Cir. 2003), first requires that the district court have jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause."). None of the cases cited by ExxonMobil suggests that a federal court's jurisdiction should be determined by reference to state preclusion law. *See, e.g., Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 375-79 (1996); *Johnson v. De Grandy*, 512 U.S. 997, 1005 (1994).

3. The Application Of *Rooker-Feldman* Does Not Turn On Whether The Federal Plaintiff Is Seeking Relief From the State-Court Judgment

ExxonMobil erroneously contends that the *Rooker-Feldman* bar has no application here because ExxonMobil is not seeking "relief" from the state-court judgment (Pet. Br. 21), since "the state-court judgment was favorable to ExxonMobil." (*Id.*, 26.) ExxonMobil then argues that by invoking *Rooker-Feldman* now, the Third Circuit engaged in "speculation" that SABIC would prevail in the pending appeal to the Delaware Supreme Court such that this suit would then take the form of a request for relief by ExxonMobil. (*Id.*, 27.)

This argument only confirms that this case is now moot. *See* Section I, *supra*. But even if it could be said that a case or controversy remained, it was hardly "speculation" on the Third Circuit's part that led to this holding. Rather, it was ExxonMobil's own assertion of what it seeks to use this suit to accomplish that informed the Third Circuit's decision. Put most starkly, if ExxonMobil were allowed to make a claim on its "insurance policy," that, too, would constitute impermissible federal-court review of the state proceedings.

In arguing otherwise, ExxonMobil takes an unduly restrictive view of what constitutes a *de facto* appeal, looking only to the subjective intention of the federal plaintiff and ignoring that the federal-court action would in effect require review of the state-court judgment. As ExxonMobil views it, "the real question at the core of a *Rooker-Feldman* inquiry [is] . . . whether the *relief* sought by ExxonMobil in its federal suit is the nullification of a state-court decision previously made." (Pet. Br. 21 (emphasis in original); *see also id.*, 20 (a *de facto* appeal requires that the "federal plaintiff[]" must have an "intention to nullify a state judgment"); *id.*, 23 ("[T]he relevant question is whether the relief sought by the federal plaintiff is *actually* challenging a prior adjudication.") (emphasis added); *id.*, 27 ("*Rooker-*

Feldman is inapposite when the federal plaintiff is not challenging the existing state-court decision").)

But contrary to ExxonMobil's contention, "the core of a *Rooker-Feldman* inquiry" (*id.*, 21) is neither the federal plaintiff's subjective "intention[s]" nor "the relief sought by the federal-court plaintiff." (*Id.*, 20.) The proper focus is on the courts, not the parties: The federal statutes prohibit "review" of state-court judgments, not merely "relief" from those judgments (indeed, most appeals in the federal system do not result in "relief" for the appellant, but all involve "review" of the lower-court decision). Even if the federal court were to arrive at the same conclusion as the state court, that determination (in effect an appellate "affirmance") would still be the product of impermissible federal-court review. But the critical point remains that a federal district court will be no less engaged in *de facto* appellate review simply because the federal plaintiff is pursuing the same result on identical claims that have already been litigated. Artful pleading in the *ad damnum* clause of a federal-court complaint cannot and should not be the tipping point for ascertaining federal jurisdiction. *See Feldman*, 460 U.S. at 482 ("[t]he form of the proceedings is not significant. It is the nature and effect which is controlling.") (quoting *In re Summers*, 325 U.S. 561, 567 (1945)); *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973) ("It would wholly frustrate explicit congressional intent to hold that the respondents in the present case could evade this requirement by the simple expedient of putting a different label on their pleadings.").

4. Discretionary Abstention Doctrines Cannot Serve As A Substitute For *Rooker-Feldman*

ExxonMobil erroneously argues that *Rooker-Feldman* should not apply to bar litigation of identical claims "actually litigated," but that instead "abstention and prudential dismissals" should be utilized by federal district courts. (Pet. Br. 31.) In ExxonMobil's estimation, the discretionary nature of abstention and prudential dismissals "appropriately

address [the] federalism and comity concerns" raised by federal-court relitigation. (*Id.*, 30.) This argument is flawed for a number of reasons.

First, *Rooker-Feldman* is a jurisdictional doctrine grounded in congressional mandate. By contrast, abstention and prudential dismissals are purely judicial creations that are applied to bar or delay suits in situations where Congress has nonetheless afforded jurisdiction. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976) (discussing the doctrine of abstention as an "extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy" of which it has jurisdiction). To the extent that abstention doctrines involve discretionary "consideration" or balancing of multiple factors (Pet. Br. 31), it is because abstention otherwise goes against congressionally mandated jurisdiction, and so must only be invoked after "a careful balancing of the important factors . . . with the balance heavily weighted in favor of the exercise of jurisdiction." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 16 (1983). *Rooker-Feldman*, which is jurisdictional and compelled by statute, does not require or deserve a multi-factor analysis, balancing, or discretion before it can be applied.

Second, ExxonMobil ignores this Court's repeated admonition that district courts should only exercise discretion to abstain in "exceptional circumstances." *Moses H. Cone*, 460 U.S. at 25-26; *see also, e.g., County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 188 (1959) (abstention remains "an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it"). Even though federal district courts and state trial courts are co-equal in our dual judicial systems, ExxonMobil would empower federal district courts with discretion to decide on their own whether to reexamine "identical claims" that had already been "actually litigated."

But ExxonMobil offers no explanation why trial-court discretion would more "appropriately address federalism and comity concerns," and the fact is that Congress has already balanced those considerations and drawn a firm jurisdictional line that prevents *de facto* appeals such as ExxonMobil's federal suit here.

5. ExxonMobil Wrongly Advocates The Seventh And Ninth Circuits' Restrictive Approaches

In its petition (*see* Pet. 21-23), and in its opening brief (Pet. Br. 28), ExxonMobil erroneously argues that this Court should adopt the extraordinarily restrictive view of *Rooker-Feldman* followed by the Seventh and Ninth Circuits. *See, e.g., Noel v. Hall*, 341 F.3d 1148 (9th Cir. 2003); *GASH Assocs. v. Vill. of Rosemont*, 995 F.2d 726 (7th Cir. 1993).

Although the Seventh and Ninth Circuits' approaches differ somewhat, under either approach *Rooker-Feldman* would only bar a federal suit where that suit seeks to redress injuries caused by the state court, but would not apply where the suit specifically seeks to redress injuries caused by the opposing parties (*i.e.*, where the federal plaintiff advances the same underlying claims "actually litigated" in state court).[18] (*See* Pet. 16 (citing *GASH Assocs.*, 995 F.2d at 728); *see also* Pet. Br. 28 ("*Rooker-Feldman* applies only

[18] *Jensen v. Foley*, 295 F.3d 745, 747-48 (7th Cir. 2002) ("The *Rooker-Feldman* doctrine, generally speaking, bars a plaintiff from bringing a § 1983 suit to remedy an injury *inflicted by* the state court's decision. . . . Preclusion, on the other hand, applies when a federal plaintiff complains of an injury that was not caused by the state court, but which the state court has previously failed to rectify."); *Garry v. Geils*, 82 F.3d 1362, 1366-67 (7th Cir. 1996) ("[T]he distinction between a federal claim alleging injury caused by a state court judgment (necessarily raising the *Rooker-Feldman* doctrine) and a federal claim alleging a prior injury that a state court failed to remedy (raising a potential res judicata problem but not *Rooker-Feldman*) has been recognized in this circuit at least since our decision in *GASH*.") (footnote omitted).

when 'the injury of which [the federal plaintiff] complains was caused *by* the [state court] judgment' itself rather than an out-of-court 'injury that the state court failed to remedy'" (quoting *Noel*, 341 F.3d at 1164-65)) (changes in original).)

Even then, the Ninth Circuit would only apply the *Rooker-Feldman* bar where the federal plaintiff goes further and "seeks as her remedy relief from the state court judgment." *See, e.g., Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) ("If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court. If, on the other hand, a federal plaintiff asserts as a legal wrong an allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does not bar jurisdiction."). As noted above, neither the drafting of the request for relief nor the federal plaintiff's subjective intentions should be the touchstone for application of *Rooker-Feldman*. Indeed, under the Ninth Circuit's hyper-restrictive approach, a federal plaintiff could bring a declaratory-judgment action expressly challenging a state-court judgment – just so long as the federal plaintiff was savvy enough not to go further in the prayer for relief and actually seek "relief from [the] state court judgment." Yet, surely a declaratory judgment in the federal plaintiff's favor would be just as offensive to the congressionally created scheme of judicial federalism than a federal-court order attempting expressly to vacate the state-court judgment.

Indeed, the Ninth Circuit's version of *Rooker-Feldman* appears to be limited to the rare (perhaps nonexistent) case where a federal litigant actually seeks the remedy of reversal or vacatur in his federal complaint – a remedy that federal trial courts are powerless to give, *see* 28 U.S.C. § 2106. That rule would improperly depend on artful pleading and a litigant's subjective intentions, and in turn would invite vexatious litigants of all stripes into the federal courts, where Article III judges would be forced to hear, on the merits, all

of the reasons why the prior state-court judgments are not res judicata or otherwise dispositive as to their "new" federal-court claims.[19]

Even the only slightly less restrictive approach of the Seventh Circuit, which reserves *Rooker-Feldman* solely for cases where "the injury [claimed in the federal complaint] is inflicted by the state court's decision" but not for cases where the federal complaint seeks to relitigate the identical claim already adjudicated by the state courts, *Durgins v. City of E. St. Louis*, 272 F.3d 841, 844 (7th Cir. 2001) (citing *GASH*, 995 F.2d 726), is divorced from the statutory bases for *Rooker-Feldman*. The Seventh Circuit's artificial division between these two categories of cases fails to acknowledge that *both* involve the sort of "review" of state-court decisions reserved to this Court by Section 1257 and thus prohibited by the *Rooker-Feldman* doctrine. Indeed, this Court "reviews" both kinds of cases under Section 1257. *Compare Shaffer v. Heitner*, 433 U.S. 186, 216-17 (1977) (holding that Delaware Supreme Court erred in affirming Delaware state courts' exercise of personal jurisdiction over nonresident defendants) *with Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961) (holding that a restaurant's exclusion of an African-American patron was not state action in violation of the equal protection clause of the Fourteenth Amendment).

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[19] Under the Seventh and Ninth Circuits' overly restrictive versions of *Rooker-Feldman*, clearly abusive successive lawsuits on the same claims brought by vexatious litigants could not be dismissed without a merits inquiry. *See, e.g., Mills v. Harmon Law Offices*, 344 F.3d 42, 45-46 (1st Cir. 2003) (*Rooker-Feldman* applied where plaintiffs "have trampled through no less than six Courts . . . to pursue this frivolous and baseless claim"); *Tropf v. Fidelity Nat'l Title Ins.*, 289 F.3d 929, 931, 938 (6th Cir. 2002) (*Rooker-Feldman* applied to two consolidated federal suits because plaintiffs had already been "denied relief by five separate state courts").

Significantly, the line the Seventh Circuit has strained to draw based on its restrictive approach – "If the federal plaintiff was the plaintiff in state court, he must contend with res judicata; if the federal plaintiff was the defendant in state court, he must contend with the *Rooker-Feldman* doctrine," *Centres, Inc. v. Town of Brookfield*, 148 F.3d 699, 702 (7th Cir. 1998) – would make the *Rooker* case itself fall outside the *Rooker-Feldman* doctrine: The Rookers were the plaintiffs in both cases. 263 U.S. at 414; *see also* 261 U.S. at 115-16. That is a compelling indicator that the Seventh Circuit's approach is wrong.

Moreover, the Seventh Circuit conflates the jurisdictional inquiry – which turns on Section 1257 and the "original jurisdiction" provisions for the district courts – with the separate question of the availability of an independent federal cause of action. The principal Seventh Circuit decision expounding upon its restrictive approach relied upon this misunderstanding of the *Rooker* and *Feldman* decisions:

> GASH objects to the outcome of a judicial proceeding and filed a separate suit to get around it. This runs headlong into [*Rooker*], and [*Feldman*], *which hold that carrying out a judicial decision does not independently violate the Co* .*titution*.

GASH Assocs., 995 F.2d at 727 (emphasis added). But *Rooker* and *Feldman* are not fairly read as addressing whether the execution of a state judicial decision gives rise to a cause of action for "violat[ing] the Constitution." That would be a merits inquiry. Rather, *Rooker* and *Feldman* stand for the proposition that whether "carrying out a judicial decision" would "independently violate the Constitution" is irrelevant, because no federal court except for this one could hear the merits of that constitutional challenge. In short, the restrictive approach of the Ninth and Seventh Circuits cannot be reconciled either with Section 1257 or with the *Rooker* decision itself.

* * *

In the end, ExxonMobil strains to come up with a coherent justification for allowing federal district courts to become guarantors of "insurance policy" lawsuits on identical claims already litigated to judgment in a state court. It fails in this task. By contrast, the decision of the Third Circuit, which found this case to be an "easily cabined" but nonetheless "classic invocation of the *Rooker-Feldman* jurisdictional bar" (Pet. App. 8a) is compelled by the statutes defining the limited scope of federal jurisdiction, consistent with the identifiable policies undergirding our system of judicial federalism, and in furtherance of the critical federal interest in preventing and minimizing federal court interference with state-court decisions and the state-court appellate process. The Court should affirm the Third Circuit's correct and sensible ruling.

CONCLUSION

This suit should either be dismissed as moot, or the court of appeals' decision dismissing it for lack of jurisdiction should be affirmed.

Respectfully submitted,

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January 4, 2005

PERTINENT STATUTORY PROVISIONS

TITLE 28–JUDICIARY AND JUDICIAL PROCEDURE

28 U.S.C. § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

28 U.S.C. § 1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

* * *

28 U.S.C. § 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. § 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000 . . . and is between—

(1) citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state . . . as plaintiff and citizens of a State or of different States.

* * *

28 U.S.C. § 1738. State and Territorial statutes and judicial proceedings; full faith and credit

* * *

[The authenticated records and judicial proceedings of any court of any such State, Territory or Possession] shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

IN THE UNITED STATES OF APPEALS FOR THE THIRD CIRCUIT

EXXON MOBIL CORPORATION, EXXON CHEMICAL ARABIA INC., AND MOBIL YANBU PETROCHEMICAL COMPANY INC.,

Plaintiffs-Appellees,

v.

SAUDI BASIC INDUSTRIES CORPORATION,

Defendant-Appellant.

No. 02-2130

* * *

APPELLEES' MOTION TO STAY CONSIDERATION OF APPEAL PENDING OUTCOME OF RELATED PROCEEDINGS

* * *

ARGUMENT

* * *

NJ-II and the Related Delaware Case, as SABIC concedes, involve "essentially the same claims." (*See* Appellant's Br. at 10)[1] The two cases revolve around the same exact dispute, including the same Joint Ventures and the same Joint Venture Agreements. In NJ-II, ExxonMobil

[1] As explained in ExxonMobil's Brief, SABIC's claims in NJ-I are also closely related to ExxonMobil's claims in NJ-II. Indeed, the district court so held in its April 3, 2002 Opinion consolidating the two matters. *See Saudi Basic Indus. Corp. v. ExxonMobil Corp.*, 194 F. Supp. 2d 378, 416 (D.N.J. 2002), *reprinted in* Joint Appendix at page A.036.

claims that SABIC overcharged the Joint Ventures in breach of the Joint Venture Agreements. In the Related Delaware Case, a jury ***has already decided*** that SABIC overcharged the very same Joint Ventures in breach of the very same Joint Venture Agreements. Although SABIC seeks to overturn the Delaware verdict, until the Delaware courts render a final decision, the issue at the base of NJ-II—whether SABIC overcharged the Joint Ventures—already has been adjudicated, rendering meaningless and advisory any proceedings in the instant appeal at this time.

Moreover, if SABIC is unsuccessful on appeal in Delaware, the judgment in the Related Delaware Case—finding that SABIC overcharged the Joint Ventures—would be *res judicata*, rendering moot ExxonMobil's claims in NJ-II and, of course, SABIC's interlocutory appeal. In that event, ExxonMobil will dismiss NJ-II, and there will be no need for this appeal to go forward at all.

In summary, there is no current need for this Court to review the district court's refusal to dismiss ExxonMobil's claims in NJ-II or to determine the FSIA issues presented in this appeal. Any further proceedings in this appeal now will potentially waste the resources of the Court and the parties.

* * *

IN THE UNITED STATES OF APPEALS FOR THE THIRD CIRCUIT

EXXON MOBIL CORPORATION, EXXON CHEMICAL ARABIA INC., AND MOBIL YANBU PETROCHEMICAL COMPANY INC.,

Plaintiffs-Appellees,

v.

SAUDI BASIC INDUSTRIES CORPORATION,

Defendant-Appellant.

No. 02-2130

BRIEF OF APPELLEES

* * *

STATEMENT OF JURISDICTION[2]

* * *

The district court properly concluded that it had subject matter jurisdiction over SABIC pursuant to 28 U.S.C. § 1330(a), because SABIC "is not entitled to immunity under sections 1605-1607" of Title 28. That subject matter jurisdiction is the central issue on this appeal.

* * *

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[2] On March 21, 2003, the jury in the Delaware suit returned a verdict of $416,880,764 against SABIC and in favor of ExxonMobil. As the claims in the Delaware suit and NJ-II are essentially identical, ExxonMobil is moving, concurrently with the filing of this Brief, to stay further proceedings in this appeal pending SABIC's appeal in the Delaware suit. Assuming SABIC is unsuccessful in its Delaware appeal, ExxonMobil will dismiss NJ-II, rendering this appeal moot. In addition, the district court has recently stayed all proceedings in NJ-I pending the outcome of SABIC's appeal in the Delaware suit.

IN THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SAUDI BASIC INDUSTRIES CORPORATION,

Plaintiff,

v. **C.A. No. 00C-07-161 JRJ**

MOBIL YANBU PETROCHEMICAL COMPANY, INC., AND EXXON CHEMICAL ARABIA, INC.,

Defendants.

BEFORE: THE HONORABLE JAN R. JURDAN

HEARING TRANSCRIPT
Thursday, February 7, 2002

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* * *

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* * *

[21] * * *

MR. ADAMO: Your Honor, I would like to—two of the points you made—and I'll stay with the point we are now, but I do want to address this allegation that we somehow misused mediation information, because I don't want you thinking that that's what happened. That's not what happened.

In any event, Special Discovery Master Weiss, to the best of my knowledge, did not condition his stay of discovery on the alleged royalty overcharge on anything that was going on here. He conditioned it on the fact that we have very strongly argued that that's the tail of the—tip of the tail of the dog, trying to take a Great Dane and go like this with it. [22]

It's collateral. And we have motions pending in front of Judge Walls to take that out of the case completely. And his decision was, other than the consent order that allowed these one or two items to be raised just prior to the mediation, which is really where—

THE COURT: I read his order.

MR. ADAMO: —the flag came from that they were about to jump us was not in the mediation. It was all this pushing about getting a discovery. We entered into a stipulation that, if the mediation was unsuccessful, this would then be revisited. And he stayed based on the fact that we argued these collateral issues and we have motions to dismiss.

What he does, when he finds out that you've agreed to go forward here—I agree with you. I'm certainly not going to pre-presume that I would have any idea what Judge Weiss would do.

But by the same token, the usability of the discovery here, at least in my experience when I've had parallel cases where we've crossed used and agreed, really isn't dependent upon

discovery independently being available in the second case and discovery being [23] open. – Because I'm going to effectively stipulate that trial, which, of course, is what ultimately counts, is where this is going to be usable. And whether the discovery is going on in the New Jersey cases or not doesn't control my agreement that the discovery here be available for use in that case.

I know that sounds like a distinction without a difference. But I've run into this a lot. I can have three cases, have discovery in this one, if I "stip" it's usable in the other two, the discovery actually could be closed in the other two, and my "stip" would still allow that to be used at trial.

MR. QUINN: Two quick points.

One, and this is really kind of a, you know, a side trail with regard to Special Master Weiss. He didn't put the stay in place because this was a collateral issue. He said, Let's wait to see what Judge Walls does. That's all. If Judge Walls is going to have it all in, then you can go ahead with discovery. That's what he actually said.

And on the other point—

THE COURT: That's not exactly what you wanted, though; right? You would have liked to proceed with [24] discovery.

MR. QUINN: Absolutely. No question about it. Your Honor, they owe us the hundreds of millions of dollars, not the other way around.

We are prepared to go forward. And, Your Honor, we're prepared to go forward quickly and have the case—if we're going to go and there's not going to be duplication, let's get the case moving and tried here in Delaware. And we have a schedule that we can propose today to get the case tried before the end of the year. It's our claim. It's our money. We'd like to go forward.

* * *